



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 29, 2015

Mr. Joe Goode
C/o David Miller, Saeed and Little, LLP
1433 North Meridian Street, Ste. 202
Indianapolis, Indiana 46202

Re: Formal Complaint 15-FC-313; Alleged Violation of the Access to Public Records Act by the Hendricks County Commissioner's Office

Dear Mr. Goode,

This advisory opinion is in response to your formal complaint alleging the Hendricks County Commissioner's Office ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Office has responded to your complaint via Counsel, Mr. Gregory Steuerwald, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 19, 2015.

BACKGROUND

Your complaint dated November 20, 2015 alleges the Hendricks County Commissioner's Office violated the Access to Public Records Act by improperly denying your records request.

On October 6, 2015, you requested from the Office, copies of all records which mention or related Joe Goode, Joseph Goode, or Spill Busters.

On October 21, 2015, Gregory Steuerwald informed you that no records could be found responsive to your request but invited you to inspect the county server.

You contend there are records responsive to the request, because you previously communicated with Mr. Gentry. Further, you question whether county officials are using private email accounts to circumvent the APRA.

On December 17, 2015 counsel responded. Counsel contends your request is overly broad and lacks reasonable particularity. Counsel notes your request did not specify time



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

parameters. Counsel also contends because of the lack of reasonable particularity, it would have been impossible to find the email cited. Finally, counsel contends there is no issue with the private emails; because the private emails were treated as disclosable under the APRA to the extent the emails were related to official business.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Hendricks County Commissioner's Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

Reasonable particularity is not defined under the APRA. In relation to emails specifically, this Office has offered guidance on what constitutes a reasonably particular search in *Informal Opinion of the Public Access Counselor 14-INF-30*:

Although not defined in the APRA, the Indiana Court of Appeals addressed the issue of reasonable particularity in the APRA in *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012), and again in *Anderson v. Huntington County Bd. of Com'rs.*, 983 N.E.2d 613 (Ind. Ct. App. 2013). The Court in *Jent* held that:

Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records.

...As I have stated in the past, email requests generally present a number of problematic challenges for a public agency. Given the sheer amount of electronic data on an email server, a voluminous request could take a significant amount of time to produce. While technology has evolved to make searches more practical with the ability to target key word hits or parameters, the agency still has to amass those records which are protected from disclosure under other APRA exceptions.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

Consider the definition of "particularity" in The New International Webster's Dictionary and Thesaurus, Encyclopedic Ed., 200: "exactitude in description; circumstantiality; strict or careful attention to detail; fastidiousness." I do believe voluminous records requests can meet that standard and agencies are required to satisfy voluminous requests, but to meet the reasonable particularity standard, they cannot be blanket requests.

When it comes to email, I generally rely on the guidance provided by the Court in *Anderson*. The Court agreed with former Public Access Counselor Hoage that a reasonably particular request names a specific sender, recipient, and date frame. I would also contend a specific request would include one or more key words for a search parameter.

Despite this, Hendricks County undertook a search and concluded no records exist which meet any relevant search parameters. You express concern, and rightfully so, that you located an email exchange between you and a Commissioner on his private email account. It clearly identifies you by name, but I have no way of knowing why it did not surface in a search. In any case, the fact remains your requests do not meet specificity requirements for a valid search pursuant to which I can make a determination. I cannot say with any degree of certainty if any other emails exist mentioning you or your company.

With regard to the question of private emails, the Commissioner's Office at least appears to be familiar with my guidance on the matter and has treated private emails according to my suggestions. It is my sincere hope the Commissioners continue to conduct their communication in a manner consistent with the public access laws. From the information provided, the issue does not seem to be systemic as you were the one which initiated communication with the Commissioner. Had the exchange been between public officials, I may have evaluated the emails with greater scrutiny.

Please do not hesitate to contact me with any further questions.

Regards,



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. Gregory Steuerwald, Esq.